

By: Sheets

H.B. No. 3138

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prosecution of the offense of money laundering and
3 to the forfeiture of certain contraband.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Articles 59.01(1) and (2), Code of Criminal
6 Procedure, are amended to read as follows:

7 (1) "Attorney representing the state" means the
8 prosecutor with felony jurisdiction in the county in which a
9 forfeiture proceeding is held under this chapter or, in a
10 proceeding for forfeiture of contraband as defined under
11 Subdivision (2)(B)(v) of this article, the city attorney of a
12 municipality if the property is seized in that municipality by a
13 peace officer employed by that municipality and the governing body
14 of the municipality has approved procedures for the city attorney
15 acting in a forfeiture proceeding. In a proceeding for forfeiture
16 of contraband as defined under Subdivision (2)(B)(vi)
17 [~~(2)(B)(vii)~~] of this article, the term includes the attorney
18 general.

19 (2) "Contraband" means property of any nature,
20 including real, personal, tangible, or intangible, that is:

21 (A) used in the commission of:

22 (i) any first or second degree felony under
23 the Penal Code;

24 (ii) any felony under Section 15.031(b),

1 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or
2 35, Penal Code;

3 (iii) any felony under The Securities Act
4 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

5 (iv) any offense under Chapter 49, Penal
6 Code, that is punishable as a felony of the third degree or state
7 jail felony, if the defendant has been previously convicted three
8 times of an offense under that chapter;

9 (B) used or intended to be used in the commission
10 of:

11 (i) any felony under Chapter 481, Health
12 and Safety Code (Texas Controlled Substances Act);

13 (ii) any felony under Chapter 483, Health
14 and Safety Code;

15 (iii) a felony under Chapter 151 [~~153~~],
16 Finance Code;

17 (iv) any felony under Chapter 34, Penal
18 Code;

19 (v) a Class A misdemeanor under Subchapter
20 B, Chapter 365, Health and Safety Code, if the defendant has been
21 previously convicted twice of an offense under that subchapter;

22 (vi) [~~any felony under Chapter 152, Finance~~
23 ~~Code,~~

24 [~~(vii)~~] any felony under Chapter 32, Human
25 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
26 involves the state Medicaid program;

27 (vii) [~~(viii)~~] a Class B misdemeanor under

1 Chapter 522, Business & Commerce Code;

2 (viii) [~~(ix)~~] a Class A misdemeanor under
3 Section 306.051, Business & Commerce Code;

4 (ix) [~~(x)~~] any offense under Section 42.10,
5 Penal Code;

6 (x) [~~(xi)~~] any offense under Section
7 46.06(a)(1) or 46.14, Penal Code;

8 (xi) [~~(xii)~~] any offense under Chapter 71,
9 Penal Code; or

10 (xii) [~~(xiii)~~] any offense under Section
11 20.05, Penal Code;

12 (C) the proceeds gained from the commission of a
13 felony listed in Paragraph (A) or (B) of this subdivision, a
14 misdemeanor listed in Paragraph (B)(vii), (ix) [~~(B)(viii)~~], (x),
15 or (xi) [~~, or (xii)~~] of this subdivision, or a crime of violence;

16 (D) acquired with proceeds gained from the
17 commission of a felony listed in Paragraph (A) or (B) of this
18 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix)
19 [~~(B)(viii)~~], (x), or (xi) [~~, or (xii)~~] of this subdivision, or a
20 crime of violence;

21 (E) used to facilitate or intended to be used to
22 facilitate the commission of a felony under Section 15.031 or
23 43.25, Penal Code; or

24 (F) used to facilitate or intended to be used to
25 facilitate the commission of a felony under Section 20A.02 or
26 Chapter 43, Penal Code.

27 SECTION 2. Article 59.011, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If
3 property described by Article 59.01(2)(B)(ix), (x), or
4 [59.01(2)(B)(x),] (xi) [, or (xii)] is subject to forfeiture under
5 this chapter and Article 18.18, the attorney representing the state
6 may proceed under either this chapter or that article.

7 SECTION 3. Chapter 59, Code of Criminal Procedure, is
8 amended by adding Articles 59.021, 59.022, 59.023, and 59.024 to
9 read as follows:

10 Art. 59.021. SUBSTITUTE PROPERTY. (a) In this article,
11 "substitute property" means property:

- 12 (1) that is not contraband;
13 (2) that is owned by a person who is the owner of, or
14 has an interest in, property that is contraband; and
15 (3) for which a search warrant is issued under
16 Subsection (c).

17 (b) This article applies to contraband that:

- 18 (1) can no longer be located after the exercise of
19 reasonable diligence;
20 (2) has been transferred, conveyed, sold to, or
21 deposited with a person other than the owner;
22 (3) is not within the jurisdiction of the court;
23 (4) has substantially diminished in value;
24 (5) has been commingled with other property and cannot
25 be readily distinguished or separated; or
26 (6) if the contraband is proceeds described by Article
27 59.01(2)(C), was used to acquire other property that is not within

1 the jurisdiction of the court.

2 (c) A district court may issue a search warrant authorizing
3 a peace officer to seize as substitute property any property of a
4 person who is the owner or who has an interest in property that is
5 contraband described by Subsection (b), if the officer submits an
6 affidavit that states:

7 (1) probable cause for the commission of an offense
8 giving rise to forfeiture of contraband;

9 (2) the nature of the contraband involved and the fair
10 market value of the substitute property to be seized;

11 (3) the reasons the contraband is unavailable for
12 forfeiture; and

13 (4) that due diligence has been exercised in
14 identifying the minimum amount of substitute property necessary to
15 approximate the fair market value of the contraband described by
16 Subsection (b).

17 (d) After seizure of the substitute property, the
18 disposition shall proceed as other cases in this chapter except
19 that the attorney representing the state must prove by a
20 preponderance of the evidence:

21 (1) that the contraband described by Subsection (b)
22 was subject to seizure and forfeiture under this chapter; and

23 (2) the fair market value of that contraband.

24 (e) If the fair market value of the substitute property
25 seized exceeds the fair market value of the contraband described by
26 Subsection (b), the court shall make appropriate orders to ensure
27 that property equal in value to the excess is returned to the person

1 or persons from whom the substitute property was seized.

2 Art. 59.022. PROPERTY REMOVED FROM THIS STATE. (a) This
3 article applies to contraband, other than real property, that is
4 determined to be located outside of this state.

5 (b) A peace officer who identifies contraband described by
6 Subsection (a) shall provide the attorney representing the state a
7 sworn statement that identifies the contraband and the reasons the
8 contraband is subject to seizure. On receiving the sworn statement,
9 the attorney representing the state may file, in the name of the
10 state, a notice of intended forfeiture in a district court in:

11 (1) the county in which the contraband, or proceeds
12 used to acquire the contraband, was known to be situated before its
13 removal out of this state;

14 (2) the county in which any owner or possessor of the
15 contraband was prosecuted for an underlying offense for which the
16 property is subject to forfeiture;

17 (3) the county in which venue existed for prosecution
18 of an underlying offense for which the property is subject to
19 forfeiture; or

20 (4) Travis County.

21 (c) The attorney representing the state shall request that
22 citation be served on any person who owns or is in possession or
23 control of the contraband to which this article applies and, on
24 service in accordance with the Texas Rules of Civil Procedure, may
25 move to have the court order that the contraband be:

26 (1) returned or brought to the jurisdiction of the
27 court; or

1 (2) delivered to an agent of this state for
2 transportation to the jurisdiction of the court.

3 (d) The attorney representing the state is entitled to all
4 reasonable discovery in accordance with the Texas Rules of Civil
5 Procedure to assist in identifying and locating contraband
6 described by Subsection (a).

7 (e) If the court orders the return of contraband under this
8 article, the contraband, after return, is subject to seizure and
9 forfeiture as otherwise provided by this chapter.

10 (f) If it is found that any person after being served with a
11 citation under Subsection (c) has transported, concealed, disposed
12 of, or otherwise acted to prevent the seizure and forfeiture of
13 contraband described by Subsection (a), the court may:

14 (1) order the payment to the attorney representing the
15 state of costs incurred in investigating and identifying the
16 location of the contraband, including discovery costs, reasonable
17 attorney's fees, expert fees, other professional fees incurred by
18 the attorney, and travel expenses;

19 (2) enter a judgment for civil contempt and impose:
20 (A) a fine of not more than \$10,000 or less than
21 \$1,000;

22 (B) confinement in jail for a term of not more
23 than 30 days or less than 10 days; or

24 (C) both fine and confinement;

25 (3) enter a judgment of forfeiture of the person's
26 interest in the contraband;

27 (4) enter a judgment in the amount of the fair market

1 value of the contraband;

2 (5) impose a civil penalty of not more than \$25,000 or
3 less than \$1,000 for each item of contraband, or each separate fund,
4 of which the person transported, concealed, disposed, or otherwise
5 acted to prevent the seizure and forfeiture; or

6 (6) order any combination of Subdivisions (1) through
7 (5).

8 Art. 59.023. SUIT FOR PROCEEDS. (a) A peace officer who
9 identifies proceeds that are gained from the commission of an
10 offense listed in Article 59.01(2)(A) or (B) shall provide the
11 attorney representing the state with a sworn statement that
12 identifies the amount of the proceeds. On receiving the sworn
13 statement, the attorney representing the state may file for a
14 judgment in the amount of the proceeds in a district court in:

15 (1) the county in which the proceeds were gained;

16 (2) the county in which any owner or possessor of the
17 property was prosecuted for an underlying offense for which the
18 property is subject to forfeiture;

19 (3) the county in which venue existed for prosecution
20 of an underlying offense for which the property is subject to
21 forfeiture; or

22 (4) Travis County.

23 (b) Each person who is shown to have been a party to an
24 underlying offense for which the proceeds are subject to forfeiture
25 are jointly and severally liable in a suit under this article,
26 regardless of whether the person has been charged for the offense.

27 Art. 59.024. MULTIPLE RECOVERY PROHIBITED. The attorney

1 representing the state may proceed under Article 59.021, 59.022, or
2 59.023, or any combination of those articles. The attorney
3 representing the state may not obtain multiple recoveries with
4 respect to the same conduct or proceeds. If the attorney
5 representing the state seeks recovery in more than one suit, the
6 attorney shall notify each court that other litigation concerning
7 the same subject matter or conduct is proceeding in other cases.

8 SECTION 4. Article 59.06(p), Code of Criminal Procedure, is
9 amended to read as follows:

10 (p) Notwithstanding Subsection (a), and to the extent
11 necessary to protect the commission's ability to recover amounts
12 wrongfully obtained by the owner of the property and associated
13 damages and penalties to which the commission may otherwise be
14 entitled by law, the attorney representing the state shall transfer
15 to the Health and Human Services Commission all forfeited property
16 defined as contraband under Article 59.01(2)(B)(vi)
17 [~~59.01(2)(B)(vii)~~]. If the forfeited property consists of property
18 other than money or negotiable instruments, the attorney
19 representing the state may, if approved by the commission, sell the
20 property and deliver to the commission the proceeds from the sale,
21 minus costs attributable to the sale. The sale must be conducted in
22 a manner that is reasonably expected to result in receiving the fair
23 market value for the property.

24 SECTION 5. Section 34.01, Penal Code, is amended by
25 amending Subdivisions (1) and (4) and adding Subdivision (1-a) to
26 read as follows:

27 (1) "Bank Secrecy Act" means the Bank Secrecy Act (31

1 U.S.C. Section 5311 et seq.), and its implementing regulations set
2 forth at 31 C.F.R. Part 103.

3 (1-a) "Criminal activity" means any offense,
4 including any preparatory offense, that is:

5 (A) classified as a felony under the laws of this
6 state or the United States; ~~or~~

7 (B) punishable by confinement for more than one
8 year under the laws of another state; or

9 (C) a violation of the Bank Secrecy Act.

10 (4) "Proceeds" means funds acquired or derived
11 directly or indirectly from, produced through, ~~or~~ realized
12 through, or used in the commission of:

13 (A) an act; or

14 (B) conduct that constitutes an offense under
15 Section 151.7032, Tax Code.

16 SECTION 6. Section 34.02(a), Penal Code, is amended to read
17 as follows:

18 (a) A person commits an offense if the person knowingly:

19 (1) acquires or maintains an interest in, conceals,
20 possesses, transfers, or transports the proceeds of criminal
21 activity;

22 (2) conducts, supervises, or facilitates a
23 transaction involving the proceeds of criminal activity;

24 (3) invests, expends, or receives, or offers to
25 invest, expend, or receive, the proceeds of criminal activity or
26 funds that the person believes are the proceeds of criminal
27 activity; ~~or~~

1 (4) finances or invests or intends to finance or
2 invest funds that the person believes are intended to further the
3 commission of criminal activity; or

4 (5) conducts, supervises, or facilitates a
5 transaction in violation of the Bank Secrecy Act.

6 SECTION 7. (a) The change in law made by this Act to Chapter
7 59, Code of Criminal Procedure, applies only to the forfeiture of
8 property in relation to an offense committed on or after the
9 effective date of this Act. Forfeiture of property in relation to
10 an offense committed before the effective date of this Act is
11 governed by the law in effect when the offense was committed, and
12 the former law is continued in effect for that purpose.

13 (b) The change in law made by this Act to Chapter 34, Penal
14 Code, applies only to an offense committed on or after the effective
15 date of this Act. An offense committed before the effective date of
16 this Act is governed by the law in effect on the date the offense was
17 committed, and the former law is continued in effect for that
18 purpose.

19 (c) For purposes of this section, an offense was committed
20 before the effective date of this Act if any element of the offense
21 occurred before that date.

22 SECTION 8. This Act takes effect September 1, 2013.